

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

ADAM PELLETIER,)	
Plaintiff,)	Civil Action No. 7:20cv00430
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
ATT. GEN. OF VA,)	By: Michael F. Urbanski
Defendant.)	Chief United States District Judge

Adam Pelletier, a Virginia inmate proceeding pro se, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pelletier challenges his 2002 convictions entered by the Circuit Court for Louisa County for rape, capital murder during the commission of or subsequent to rape, using a firearm during the commission of murder, and possession of a firearm by a convicted felon.

Court records indicate that this court dismissed Pelletier's previously-filed § 2254 petition concerning the same convictions on May 8, 2007, with prejudice.¹ See Pelletier v. Robinson, No. 7:06-cv-00582, 2007 U.S. Dist. LEXIS 33743, at *38, 2007 WL 1378520, at *12 (W.D. Va. May 8, 2007). A numerically second § 2254 petition should not be considered second or successive pursuant to 28 U.S.C. § 2244(b) if the facts relied on by the petitioner in the subsequent petition did not exist when the numerically first petition was filed and adjudicated. United States v. Hairston, 754 F.3d 258, 262 (4th Cir. 2014); see Panetti v. Quarterman, 551 U.S. 930, 942-47 (2007) (holding that a numerically second § 2254 habeas petition is not governed by the strictures of § 2244(b)(2) on second or successive petitions where the claim was not ripe at the time of the

¹ The court also dismissed Pelletier's subsequent habeas petitions filed in Civil Actions Nos. 7:15cv427 and 7:16cv322.

initial petition); see also In re Williams, 444 F.3d 233, 235 (4th Cir. 2006) (discussing interchangeable interpretations of 28 U.S.C. § 2244(b) and § 2255(h)).

In his instant petition, Pelletier presents claims of prosecutorial misconduct and ineffective assistance of counsel. He also argues that he is actually innocent of his convictions. However, all of the facts upon which his claims rely existed when he filed his first federal habeas petition. Pelletier relies upon matters of record from his trial or matters of public record that existed around the time of his trial in 2002. Consequently, the instant petition is successive in accordance with § 2244(b). Cf. Schlup v. Delo, 513 U.S. 298, 327 (1995).

Pursuant to § 2244(b), a federal district court may consider a second or successive § 2254 petition only upon specific certification from a United States Court of Appeals that claims in the subsequent petition meet certain criteria. 28 U.S.C. § 2244(b). Pelletier does not establish that the instant petition is not successive or that he has obtained certification from the Fourth Circuit. The court notes that a claim of actual innocence raised in a successive habeas petition still requires authorization from the Fourth Circuit before this court may consider it. See Richardson v. Thomas, 930 F.3d 587, 594 (4th Cir. 2019) (holding that a court of appeals must engage in the actual innocence inquiry under § 2244(b)(2)); Perry v. Clarke, No. 3:14CV523, 2015 U.S. Dist. LEXIS 42312, 2015 WL 11112523, at *2 (E.D. Va. Mar. 31, 2015) (rejecting petitioner's argument that the district court could examine his successive § 2254 petition on the basis of actual innocence because that determination must be made "in the first instance" by a circuit court of appeals) (citation omitted). Accordingly, the court will dismiss Pelletier's petition without prejudice as successive. Further, finding that Pelletier has not made the requisite substantial showing of a

denial of a constitutional right as required by 28 U.S.C. § 2253(c) and Slack v. McDaniel, 529 U.S. 473, 484 (2000), a certificate of appealability is denied.

ENTER: This 13th day of August, 2020.



Michael F. Urbanski
Chief U.S. District Judge
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Michael F. Urbanski
Chief United States District Judge